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applying a pathology differentiating agent on a tissue sample, wherein said pathology differentiating agent chemically interacts with said tissue sample and alters its optical characteristics; and

monitoring the rate of change of light reflection from said tissue sample over time, thereby monitoring the effects of a pathology differentiating agent on a tissue sample.

6. (Amended) A method for the *in vivo* diagnosis of a tissue abnormality in a subject, comprising

contacting a tissue in a subject with a pathology differentiating agent, wherein said pathology differentiating agent chemically interacts with said tissue sample and alters its optical characteristics;

exposing said tissue in said subject to optical radiation; and

monitoring the intensity of light emitted from said tissue over time, thereby diagnosing a tissue abnormality in a subject.

#### REMARKS

Applicant and his attorney would like to thank the Examiner for the courtesy of the telephonic interviews of December 17, 2002, during which the foregoing claim amendments were discussed.

Claims 1-16 were pending in the application. Claims 1 and 6 have been amended. Accordingly, after the amendments presented herein have been entered, claims 1-16 will remain pending. For the Examiner's convenience these claims are set forth herein in Appendix A.

Attached hereto is a marked-up version of the changes made to the claims by the current amendments. The attached page is captioned "Version With Markings to Show Changes Made".

Support for the amendments to claims 1 and 6 may be found throughout the specification, including the claims as originally filed. Specifically, support may be found at, for example, page 2, lines 7-10; page 4, lines 14-18; page 16, lines 5-8; and page 17, lines 17-33 of the specification.

*No new matter has been added.* Any amendments to and/or cancellation of the claims should in no way be construed as acquiescence to any of the Examiner's rejections and was done

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solely to expedite the prosecution of the application. Applicant reserves the right to pursue the claims as originally filed in this or a separate application(s).

*The Article "a" or "an" as used in the Pending Claims*

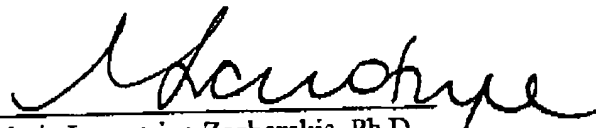
Applicant respectfully submits that it is a well established principle of patent law that "an indefinite article 'a' or 'an' in patent parlance carries the meaning of 'one or more' in open-ended claims containing the transitional phrase 'comprising.'" *KCJ Corp. v. Kinetic Concepts, Inc.*, 223 F.3d 1351, 55 USPQ2d 1835 (Fed. Cir. 2000); *Elkay Mfg. Co. v. Ebco Mfg. Co.*, 192 F.3d 973, 977, 52 USPQ2d 1109, 1112 (Fed. Cir. 1999); *AbTax, Inc. v. Extron Corp.*, 122 F.3d 1019, 1023, 43 USPQ2d 1545, 1548 (Fed. Cir. 1997); *North Am. Vaccine, Inc. v. American Cyanamid Co.*, 7 F.3d 1571, 1575-76, 28 USPQ2d 1333, 1336 (Fed. Cir. 1993); *see also* Robert C. Faber, *Landis on Mechanics of Patent Claim Drafting* 531 (3d ed. 1990).

SUMMARY

In view of the foregoing remarks, reconsideration of the rejections and allowance of all pending claims is respectfully requested.

If a telephone conversation with Applicant's Attorney would expedite prosecution of the above-identified application, the Examiner is urged to call the undersigned at (617) 227-7400.

Respectfully submitted,



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Limited Recognition Under 37 C.F.R. §10.9(b)  
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Dated: December 17, 2002

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**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**In the claims:**

Please amend claims 1 and 6 as follows:

1. (Amended) A method for monitoring the effects of a pathology differentiating agent on a tissue sample, comprising:

applying a pathology differentiating agent on a tissue sample, wherein said pathology differentiating agent chemically interacts with said tissue sample and alters its optical characteristics; and

monitoring the rate of change of light reflection from said tissue sample over time, thereby monitoring the effects of a pathology differentiating agent on a tissue sample.

6. (Amended) A method for the *in vivo* diagnosis of a tissue abnormality in a subject, comprising

contacting a tissue in a subject with a pathology differentiating agent, wherein said pathology differentiating agent chemically interacts with said tissue sample and alters its optical characteristics;

exposing said tissue in said subject to optical radiation; and

monitoring the intensity of light emitted from said tissue over time, thereby diagnosing a tissue abnormality in a subject.